

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RUBEN TONY CERVANTES,)	Case No.: 1:20-cv-00188-NONE-JLT (HC)
)	
Petitioner,)	FINDINGS AND RECOMMENDATION TO
)	DISMISS THE PETITION FOR FAILURE TO
v.)	COMPLY
)	
W.J. SULLIVAN, Warden,)	[TWENTY-ONE DAY OBJECTION DEADLINE]
)	
Respondent.)	
)	

Soon after filing his petition (Doc. 1), Petitioner filed a motion to stay and abey the action. (Doc. 4) Respondent does not oppose this request. (Doc. 9.) On April 14, 2020, the Court granted the stay, and Petitioner was directed to file a status report within 60 days of the date of service of that order, and then every 60 days thereafter. (Doc. 10.) However, Petitioner failed to file a status report, and the Court issued an order on June 30, 2020 directing him to file a status report within 14. (Doc. 11.) The Court advised him that his failure to comply would result in the Court vacating the stay and dismissing the action. (*Id.*) More than 14 days have passed since the report was due, and Petitioner has failed to comply. Therefore, the Court will recommend the action be **DISMISSED**.

DISCUSSION

Local Rule 110 provides that a “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” District courts have the

1 inherent power to control their dockets and “in the exercise of that power, they may impose sanctions
 2 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831
 3 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute
 4 an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.
 5 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
 6 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
 7 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal
 8 for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
 9 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with
 10 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of
 11 prosecution and failure to comply with local rules).

12 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
 13 order, or failure to comply with local rules, the court must consider several factors: (1) the public’s
 14 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
 15 prejudice to the Respondents; (4) the public policy favoring disposition of cases on their merits; and
 16 (5) the availability of less drastic alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61;
 17 Malone, 833 F.2d at 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

18 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
 19 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because this case
 20 has been pending since February 6, 2020. The third factor, risk of prejudice to Respondent, also
 21 weighs in favor of dismissal because a presumption of injury arises from any unreasonable delay in
 22 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor,
 23 public policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
 24 favor of dismissal. Finally, a court’s warning to a party that failure to obey the court’s order will result
 25 in dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at 1262. The
 26 Court’s previous order stated that failure to comply with the Court’s orders will result in dismissal.
 27 (Doc. 11.) Thus, Petitioner had adequate warning that dismissal would result from his noncompliance
 28 with the Court’s order.

RECOMMENDATION

Accordingly, the Court RECOMMENDS that this action be DISMISSED for Petitioner's failure to comply with court orders and failure to prosecute.

This Findings and Recommendation is submitted to the assigned District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one days after service of the Findings and Recommendation, Petitioner may file written objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **July 23, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE